



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XB427]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of re-issuance of letter of authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, its implementing regulations, and NMFS' MMPA Regulations for Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico, notification is hereby given that a Letter of Authorization (LOA) has been re-issued to bp Exploration & Production Inc. (bp) for the take of marine mammals incidental to geophysical survey activity in the Gulf of Mexico.

DATES: The LOA is effective from September TBD, 2021, through April 19, 2026.

ADDRESSES: The LOA, LOA request, and supporting documentation are available online at: www.fisheries.noaa.gov/action/incidental-take-authorization-oil-and-gas-industry-geophysical-survey-activity-gulf-mexico. In case of problems accessing these documents, please call the contact listed below (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Ben Laws, Office of Protected Resources, NMFS, (301) 427-8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined “negligible impact” in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Except with respect to certain activities not pertinent here, the MMPA defines “harassment” as any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

On January 19, 2021, we issued a final rule with regulations to govern the unintentional taking of marine mammals incidental to geophysical survey activities conducted by oil and gas industry operators, and those persons authorized to conduct activities on their behalf (collectively “industry operators”), in Federal waters of the U.S. Gulf of Mexico (GOM) over the course of 5 years (86 FR 5322). The rule was based on

our findings that the total taking from the specified activities over the five-year period will have a negligible impact on the affected species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of those species or stocks for subsistence uses. The rule became effective on April 19, 2021.

Our regulations at 50 CFR 217.180 *et seq.* allow for the issuance of LOAs to industry operators for the incidental take of marine mammals during geophysical survey activities and prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat (often referred to as mitigation), as well as requirements pertaining to the monitoring and reporting of such taking. Under 50 CFR 217.186(e), issuance of an LOA shall be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations and a determination that the amount of take authorized under the LOA is of no more than small numbers.

NMFS issued an LOA to bp on July 13, 2021, for the take of marine mammals incidental to zero offset vertical seismic profile (VSP) geophysical surveys planned to occur over approximately 5 years within existing bp prospects and/or fields, including the Mad Dog, Na Kika, Thunder Horse, and Atlantis prospects located in the Green Canyon (Mad Dog and Atlantis), Mississippi Canyon (Na Kika and Thunder Horse), and Atwater Valley (Atlantis) areas of the central GOM (see Figure 1 in bp's application). Please see the **Federal Register** notice of issuance (86 FR 38018; July 19, 2021) for additional detail regarding the LOA and the survey activity.

Bp anticipates a total of 10 zero offset VSP surveys over the period of LOA effectiveness, with each survey expected to require 2 days (total of 20 days over the period of effectiveness). Bp anticipates that no more than two surveys would occur in any one year. However, due to the potential for unforeseen circumstances that would require a longer duration to accomplish the survey objectives, bp indicated it may conduct up to

seven zero offset VSP survey days in any one year. Since issuance of the LOA, no survey work has occurred.

Consistent with the preamble to the final rule, the survey effort proposed by bp in its LOA request was used to develop LOA-specific take estimates based on the acoustic exposure modeling results described in the preamble (86 FR 5322, 5398; January 19, 2021). These results provided an estimate of four killer whale Level B harassment events per year of zero offset VSP survey effort (based on the maximum seven days per year). Consistent with other situations involving the low likelihood of encounter for rare species such as killer whales in the GOM, NMFS authorized take of a single group of average size, which is seven (representing a single potential encounter) (Maze-Foley and Mullin, 2006). NMFS has reconsidered the available information and determined that no killer whale take is likely, and has re-issued the LOA to reflect this.

As discussed in the final rule, the density models produced by Roberts *et al.* (2016) provide the best available scientific information regarding predicted density patterns of cetaceans in the U.S. GOM. The predictions represent the output of models derived from multi-year observations and associated environmental parameters that incorporate corrections for detection bias. However, in the case of killer whales—a rare GOM species—the model is informed by few data. The model’s authors noted the expected non-uniform distribution of this rarely-encountered species and expressed that, due to the limited killer whale data available to inform the model (because they are rare), it “should be viewed cautiously” (Roberts *et al.*, 2015). Moreover, the rarity of encounter during seismic surveys is not likely to be the product of high bias on the probability of detection (86 FR 5322; January 19, 2021). In addition, killer whales typically occur only in particularly deep water, which is not where the bp survey activity will take place.

While this information is reflected through the density model informing the acoustic exposure modeling results, there is relatively high uncertainty associated with the

model for this species, and the acoustic exposure modeling applies mean distribution data over areas where the species is in fact less likely to occur. Based on this, NMFS determined that the generic acoustic exposure modeling results for killer whales will generally result in estimated take numbers that are inconsistent with the assumptions made in the rule regarding expected killer whale take (86 FR 5322, 5403; January 19, 2021). In addition (as noted in the notice of issuance for the LOA (86 FR 38018; July 19, 2021)), differences between available modeled survey geometries (*i.e.*, 2D, 3D NAZ, 3D WAZ, Coil) and the subject zero offset VSP surveys, and the fact that all available acoustic exposure modeling results assume use of a 72 element, 8,000 in³ array (compared with the 6-12 element, 2,400 in³ array planned for use by bp), mean that take estimate numbers for this particular survey based on the model are expected to be significantly conservative.

Taking these considerations together with the fact that the estimated annual killer whale take numbers based on the model are low (less than the average group size) and that the annual survey effort for this LOA is of very brief duration, we conclude that no take of killer whales is likely to occur. Therefore, NMFS has re-issued the LOA with no authorization for take of killer whales. Authorized take numbers represented in the original notice of issuance are unchanged for all other species (see Table 1 below), and the determination that the taking is of no more than small numbers of marine mammals provided in the notice of issuance (86 FR 38018; July 19, 2021) remains valid.

Table 1. Take Analysis, Zero Offset VSP LOA

Species	Annual authorized take ¹	Abundance ²	Percent abundance
Sperm whale	198	2,207	9.0
<i>Kogia</i> spp.	79 ³	4,373	1.8
Beaked whales	1,120	3,768	29.7
Rough-toothed dolphin	134	4,853	2.8
Bottlenose dolphin	681	176,108	0.4
Clymene dolphin	449	11,895	3.8
Atlantic spotted dolphin	258	74,785	0.3
Pantropical spotted dolphin	2,310	102,361	2.3
Spinner dolphin	496	25,114	2.0
Striped dolphin	182	5,229	3.5

Fraser's dolphin	53	1,665	3.2
Risso's dolphin	128	3,764	3.4
Melon-headed whale	290	7,003	4.1
Pygmy killer whale	64	2,126	3.0
False killer whale	96	3,204	3.0
Killer whale	0	267	n/a
Short-finned pilot whale	77	1,981	3.9

¹Scalar ratios were not applied in this case due to brief annual survey duration.

²Best abundance estimate. For most taxa, the best abundance estimate for purposes of comparison with take estimates is considered here to be the model-predicted abundance (Roberts *et al.*, 2016). For those taxa where a density surface model predicting abundance by month was produced, the maximum mean seasonal abundance was used. For those taxa where abundance is not predicted by month, only mean annual abundance is available. For the killer whale, the larger estimated SAR abundance estimate is used.

³Includes 2 annual takes by Level A harassment and 77 annual takes by Level B harassment.

Authorization

NMFS has determined that the level of taking for the LOA request is consistent with the findings made for the total taking allowable under the incidental take regulations and that the amount of take authorized under the LOA is of no more than small numbers. NMFS has re-issued the LOA to bp authorizing the take of marine mammals incidental to its zero offset VSP geophysical survey activity, for the reasons described above.

Dated: September 23, 2021.

Kimberly Damon-Randall,

Director, Office of Protected Resources,

National Marine Fisheries Service.

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